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HOUSE BILL 2430

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State of Washington

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By Representatives Campbell, Kirby, McCune, Morrell, Hurst, Dunn, and O'Brien

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1 AN ACT Relating to marketing controlled substances to minors;  
2 amending RCW 9.94A.533; adding a new section to chapter 9.94A RCW; and  
3 prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 9.94A RCW  
6 to read as follows:

7 In a criminal case where:

8 (1) The defendant has been convicted of manufacturing, selling,  
9 delivering, or possessing with intent to manufacture, sell, or deliver  
10 a controlled substance listed in RCW 69.50.401; and

11 (2) There has been a special allegation pleaded and proven beyond  
12 a reasonable doubt that the defendant committed the crime that involved  
13 a controlled substance listed in RCW 69.50.401 that was flavored,  
14 colored, packaged, or otherwise altered in such a way that is designed  
15 with the intent to make that controlled substance more appealing to a  
16 person under eighteen years of age;

17 the court shall make a finding of fact of the special allegation, or if  
18 a jury trial is had, the jury shall, if it finds the defendant guilty,  
19 also find a special verdict as to the special allegation.

1       **Sec. 2.** RCW 9.94A.533 and 2007 c 368 s 9 are each amended to read  
2 as follows:

3       (1) The provisions of this section apply to the standard sentence  
4 ranges determined by RCW 9.94A.510 or 9.94A.517.

5       (2) For persons convicted of the anticipatory offenses of criminal  
6 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the  
7 standard sentence range is determined by locating the sentencing grid  
8 sentence range defined by the appropriate offender score and the  
9 seriousness level of the completed crime, and multiplying the range by  
10 seventy-five percent.

11       (3) The following additional times shall be added to the standard  
12 sentence range for felony crimes committed after July 23, 1995, if the  
13 offender or an accomplice was armed with a firearm as defined in RCW  
14 9.41.010 and the offender is being sentenced for one of the crimes  
15 listed in this subsection as eligible for any firearm enhancements  
16 based on the classification of the completed felony crime. If the  
17 offender is being sentenced for more than one offense, the firearm  
18 enhancement or enhancements must be added to the total period of  
19 confinement for all offenses, regardless of which underlying offense is  
20 subject to a firearm enhancement. If the offender or an accomplice was  
21 armed with a firearm as defined in RCW 9.41.010 and the offender is  
22 being sentenced for an anticipatory offense under chapter 9A.28 RCW to  
23 commit one of the crimes listed in this subsection as eligible for any  
24 firearm enhancements, the following additional times shall be added to  
25 the standard sentence range determined under subsection (2) of this  
26 section based on the felony crime of conviction as classified under RCW  
27 9A.28.020:

28       (a) Five years for any felony defined under any law as a class A  
29 felony or with a statutory maximum sentence of at least twenty years,  
30 or both, and not covered under (f) of this subsection;

31       (b) Three years for any felony defined under any law as a class B  
32 felony or with a statutory maximum sentence of ten years, or both, and  
33 not covered under (f) of this subsection;

34       (c) Eighteen months for any felony defined under any law as a class  
35 C felony or with a statutory maximum sentence of five years, or both,  
36 and not covered under (f) of this subsection;

37       (d) If the offender is being sentenced for any firearm enhancements  
38 under (a), (b), and/or (c) of this subsection and the offender has

1 previously been sentenced for any deadly weapon enhancements after July  
2 23, 1995, under (a), (b), and/or (c) of this subsection or subsection  
3 (4)(a), (b), and/or (c) of this section, or both, all firearm  
4 enhancements under this subsection shall be twice the amount of the  
5 enhancement listed;

6 (e) Notwithstanding any other provision of law, all firearm  
7 enhancements under this section are mandatory, shall be served in total  
8 confinement, and shall run consecutively to all other sentencing  
9 provisions, including other firearm or deadly weapon enhancements, for  
10 all offenses sentenced under this chapter. However, whether or not a  
11 mandatory minimum term has expired, an offender serving a sentence  
12 under this subsection may be granted an extraordinary medical placement  
13 when authorized under RCW 9.94A.728(4);

14 (f) The firearm enhancements in this section shall apply to all  
15 felony crimes except the following: Possession of a machine gun,  
16 possessing a stolen firearm, drive-by shooting, theft of a firearm,  
17 unlawful possession of a firearm in the first and second degree, and  
18 use of a machine gun in a felony;

19 (g) If the standard sentence range under this section exceeds the  
20 statutory maximum sentence for the offense, the statutory maximum  
21 sentence shall be the presumptive sentence unless the offender is a  
22 persistent offender. If the addition of a firearm enhancement  
23 increases the sentence so that it would exceed the statutory maximum  
24 for the offense, the portion of the sentence representing the  
25 enhancement may not be reduced.

26 (4) The following additional times shall be added to the standard  
27 sentence range for felony crimes committed after July 23, 1995, if the  
28 offender or an accomplice was armed with a deadly weapon other than a  
29 firearm as defined in RCW 9.41.010 and the offender is being sentenced  
30 for one of the crimes listed in this subsection as eligible for any  
31 deadly weapon enhancements based on the classification of the completed  
32 felony crime. If the offender is being sentenced for more than one  
33 offense, the deadly weapon enhancement or enhancements must be added to  
34 the total period of confinement for all offenses, regardless of which  
35 underlying offense is subject to a deadly weapon enhancement. If the  
36 offender or an accomplice was armed with a deadly weapon other than a  
37 firearm as defined in RCW 9.41.010 and the offender is being sentenced  
38 for an anticipatory offense under chapter 9A.28 RCW to commit one of

1 the crimes listed in this subsection as eligible for any deadly weapon  
2 enhancements, the following additional times shall be added to the  
3 standard sentence range determined under subsection (2) of this section  
4 based on the felony crime of conviction as classified under RCW  
5 9A.28.020:

6 (a) Two years for any felony defined under any law as a class A  
7 felony or with a statutory maximum sentence of at least twenty years,  
8 or both, and not covered under (f) of this subsection;

9 (b) One year for any felony defined under any law as a class B  
10 felony or with a statutory maximum sentence of ten years, or both, and  
11 not covered under (f) of this subsection;

12 (c) Six months for any felony defined under any law as a class C  
13 felony or with a statutory maximum sentence of five years, or both, and  
14 not covered under (f) of this subsection;

15 (d) If the offender is being sentenced under (a), (b), and/or (c)  
16 of this subsection for any deadly weapon enhancements and the offender  
17 has previously been sentenced for any deadly weapon enhancements after  
18 July 23, 1995, under (a), (b), and/or (c) of this subsection or  
19 subsection (3)(a), (b), and/or (c) of this section, or both, all deadly  
20 weapon enhancements under this subsection shall be twice the amount of  
21 the enhancement listed;

22 (e) Notwithstanding any other provision of law, all deadly weapon  
23 enhancements under this section are mandatory, shall be served in total  
24 confinement, and shall run consecutively to all other sentencing  
25 provisions, including other firearm or deadly weapon enhancements, for  
26 all offenses sentenced under this chapter. However, whether or not a  
27 mandatory minimum term has expired, an offender serving a sentence  
28 under this subsection may be granted an extraordinary medical placement  
29 when authorized under RCW 9.94A.728(4);

30 (f) The deadly weapon enhancements in this section shall apply to  
31 all felony crimes except the following: Possession of a machine gun,  
32 possessing a stolen firearm, drive-by shooting, theft of a firearm,  
33 unlawful possession of a firearm in the first and second degree, and  
34 use of a machine gun in a felony;

35 (g) If the standard sentence range under this section exceeds the  
36 statutory maximum sentence for the offense, the statutory maximum  
37 sentence shall be the presumptive sentence unless the offender is a  
38 persistent offender. If the addition of a deadly weapon enhancement

1 increases the sentence so that it would exceed the statutory maximum  
2 for the offense, the portion of the sentence representing the  
3 enhancement may not be reduced.

4 (5) The following additional times shall be added to the standard  
5 sentence range if the offender or an accomplice committed the offense  
6 while in a county jail or state correctional facility and the offender  
7 is being sentenced for one of the crimes listed in this subsection. If  
8 the offender or an accomplice committed one of the crimes listed in  
9 this subsection while in a county jail or state correctional facility,  
10 and the offender is being sentenced for an anticipatory offense under  
11 chapter 9A.28 RCW to commit one of the crimes listed in this  
12 subsection, the following additional times shall be added to the  
13 standard sentence range determined under subsection (2) of this  
14 section:

15 (a) Eighteen months for offenses committed under RCW 69.50.401(2)  
16 (a) or (b) or 69.50.410;

17 (b) Fifteen months for offenses committed under RCW 69.50.401(2)  
18 (c), (d), or (e);

19 (c) Twelve months for offenses committed under RCW 69.50.4013.

20 For the purposes of this subsection, all of the real property of a  
21 state correctional facility or county jail shall be deemed to be part  
22 of that facility or county jail.

23 (6) ~~((An additional twenty four months shall be added to the  
24 standard sentence range for any ranked offense involving))~~ (a) The  
25 following additional times shall be added to the standard sentence  
26 range if the offense involves a violation of chapter 69.50 RCW ((if the  
27 offense was)):

28 (i) Twenty-four months for an offense that is also a violation of  
29 RCW 69.50.435 or 9.94A.605;

30 (ii) Thirty-six months for an offense that is also a violation of  
31 section 1 of this act.

32 (b) All enhancements under this subsection shall run consecutively  
33 to all other sentencing provisions, for all offenses sentenced under  
34 this chapter.

35 (7) An additional two years shall be added to the standard sentence  
36 range for vehicular homicide committed while under the influence of  
37 intoxicating liquor or any drug as defined by RCW 46.61.502 for each  
38 prior offense as defined in RCW 46.61.5055.

1           (8)(a) The following additional times shall be added to the  
2 standard sentence range for felony crimes committed on or after July 1,  
3 2006, if the offense was committed with sexual motivation, as that term  
4 is defined in RCW 9.94A.030. If the offender is being sentenced for  
5 more than one offense, the sexual motivation enhancement must be added  
6 to the total period of total confinement for all offenses, regardless  
7 of which underlying offense is subject to a sexual motivation  
8 enhancement. If the offender committed the offense with sexual  
9 motivation and the offender is being sentenced for an anticipatory  
10 offense under chapter 9A.28 RCW, the following additional times shall  
11 be added to the standard sentence range determined under subsection (2)  
12 of this section based on the felony crime of conviction as classified  
13 under RCW 9A.28.020:

14           (i) Two years for any felony defined under the law as a class A  
15 felony or with a statutory maximum sentence of at least twenty years,  
16 or both;

17           (ii) Eighteen months for any felony defined under any law as a  
18 class B felony or with a statutory maximum sentence of ten years, or  
19 both;

20           (iii) One year for any felony defined under any law as a class C  
21 felony or with a statutory maximum sentence of five years, or both;

22           (iv) If the offender is being sentenced for any sexual motivation  
23 enhancements under (i), (ii), and/or (iii) of this subsection and the  
24 offender has previously been sentenced for any sexual motivation  
25 enhancements on or after July 1, 2006, under (i), (ii), and/or (iii) of  
26 this subsection, all sexual motivation enhancements under this  
27 subsection shall be twice the amount of the enhancement listed;

28           (b) Notwithstanding any other provision of law, all sexual  
29 motivation enhancements under this subsection are mandatory, shall be  
30 served in total confinement, and shall run consecutively to all other  
31 sentencing provisions, including other sexual motivation enhancements,  
32 for all offenses sentenced under this chapter. However, whether or not  
33 a mandatory minimum term has expired, an offender serving a sentence  
34 under this subsection may be granted an extraordinary medical placement  
35 when authorized under RCW 9.94A.728(4);

36           (c) The sexual motivation enhancements in this subsection apply to  
37 all felony crimes;

1 (d) If the standard sentence range under this subsection exceeds  
2 the statutory maximum sentence for the offense, the statutory maximum  
3 sentence shall be the presumptive sentence unless the offender is a  
4 persistent offender. If the addition of a sexual motivation  
5 enhancement increases the sentence so that it would exceed the  
6 statutory maximum for the offense, the portion of the sentence  
7 representing the enhancement may not be reduced;

8 (e) The portion of the total confinement sentence which the  
9 offender must serve under this subsection shall be calculated before  
10 any earned early release time is credited to the offender;

11 (f) Nothing in this subsection prevents a sentencing court from  
12 imposing a sentence outside the standard sentence range pursuant to RCW  
13 9.94A.535.

14 (9) An additional one-year enhancement shall be added to the  
15 standard sentence range for the felony crimes of RCW 9A.44.073,  
16 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on  
17 or after July 22, 2007, if the offender engaged, agreed, or offered to  
18 engage the victim in the sexual conduct in return for a fee. If the  
19 offender is being sentenced for more than one offense, the one-year  
20 enhancement must be added to the total period of total confinement for  
21 all offenses, regardless of which underlying offense is subject to the  
22 enhancement. If the offender is being sentenced for an anticipatory  
23 offense for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079,  
24 9A.44.083, 9A.44.086, or 9A.44.089, and the offender attempted,  
25 solicited another, or conspired to engage, agree, or offer to engage  
26 the victim in (~~the~~) the sexual conduct in return for a fee, an  
27 additional one-year enhancement shall be added to the standard sentence  
28 range determined under subsection (2) of this section. For purposes of  
29 this subsection, "sexual conduct" means sexual intercourse or sexual  
30 contact, both as defined in chapter 9A.44 RCW.

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